

IN SENATE OF THE UNITED STATES.

APRIL 11, 1848.

Submitted, and ordered to be printed.

Mr. BRADBURY made the following

REPORT:

[To accompany bill S. No. 211.]

The Committee of Claims, to whom was referred the petition of Henry Williams and others, praying compensation for a vessel lost while in the service of the United States, have had the same under consideration, and report:

That it appears, from evidence in the case, that the petitioners, who were the owners of the schooner Ticonic, chartered her to the United States, on the 5th of March, 1847, by a charter party entered into by Captain Babbitt, United States assistant quartermaster, on the part of the government, and the captain of the schooner on the part of the owners, for the purpose of transporting munitions of war to the vicinity of Vera Cruz, preparatory to the attack upon that place. That, on the 13th of March, she sailed from Tampico, laden with mules belonging to the United States, and arrived at her place of destination at Sacrificios island, on the 22d, and anchored. That, on the 23d, the captain, in accordance with previous orders, reported his arrival to the proper officers. He was then ordered by the United States officer having charge of the business, and acting as harbor master, to place the schooner near the beach, for the more convenient landing of the mules, and was told that, if this direction was not complied with, his charter would stop. The schooner was accordingly brought nearer to the beach. The necessity being urgent that the mules should be immediately landed for the use of the army then engaged in the attack upon Vera Cruz, and the government having at command no means for their conveyance from the vessel to the shore, the captain was, on the following day, required again to remove the schooner still nearer to the beach. He remonstrated against the removal, as one that must expose the vessel to imminent danger. He was then peremptorily directed by the officer in charge to bring her to the designated position; and assured that she should be at the risk of the United States until her cargo should be discharged, the order was obeyed, and the landing of the cargo commenced. The captain then went on shore to the office of the quartermaster, and told

him that his vessel was laying in an unsafe position, very near the beach, and that he should move off, "charter stopped, or not," if she was at the risk of the owners; and the quartermaster assured him, that while landing the mules, under the then existing circumstances, the vessel should be at the risk of the United States government, as it was necessary they should be got on shore as fast as possible for service.

Before their landing had been completed, the wind drove the vessel on shore, where she was lost, notwithstanding every effort to save her.

It is evident, from the testimony, that the loss was occasioned by the removal of the vessel, in opposition to the judgment of the captain, from a suitable position, to an unsafe anchorage, too near to the beach, by the order and under the direction of the United States officer having charge of the cargo on board.

Several ship masters, who were witnesses of the transaction, have given testimony to this effect. The acting quartermaster general, who was conversant with all the circumstances, has certified to the justice of the claim on the government for the loss of the schooner. It does not appear to be a case of loss arising from a risk incurred under the charter party. By that contract, the vessel, which was chartered for one month, or longer, if desired by the United States, was to be kept by the owners "at all times ready for sea, to run to and from Tampico, to any other point in the Gulf of Mexico." Upon a fair construction of the contract, no authority appears to have been given to United States officers to place the vessel in an unsuitable and dangerous position, at the risk of the owners. She was to be subject to the ordinary use in such service, and to be exposed to the ordinary risks, and no more.

The case would seem, then, to be brought within the principle applicable to cases of property lost in consequence of its being taken from possession or control of its owners, by the competent military authority, for the use of the government, in time of war. For such loss, compensation is made by the government.

It is proved that the schooner was nearly new, and that she was staunch, seaworthy, and well fitted and manned.

Several ship masters have testified in relation to her value, none placing it at less than \$5,500, and one at \$7,000, at the place where she was. She was nearly a total loss, her net sales amounting to \$233 93; and the expenses incurred in attempting to get her off, notary's fees, &c., \$226 75.

The petitioners have informed the committee that they had an insurance on the vessel for \$1,860.

The committee, in conclusion, recommend the passage of the accompanying bill.